

107

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1838 of 2015 (O&M)

Date of decision: February 18, 2016

The Kothe Waring CASS Ltd.

.....Appellant

Versus

Hartek Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. G.S. Brar, Advocate
for the appellant.

SABINA, J

Respondent No.1 had filed suit for declaration challenging the order dated 10.06.2008, whereby, he was dismissed from service.

The case of respondent No.1, in brief, was that he had joined the defendant No.3-Society as a Salesman in the year 1981. Respondent No.1 was issued charge-sheet by defendant No.3 vide resolution dated 18.02.2008. Respondent No.1 submitted his reply to the charge-sheet and the Inquiry Officer gave a report dated 29.04.2008 holding that respondent No.1 was guilty of the charges framed against him. In fact, Inquiry officer had given the report without examining any witnesses. Respondent No.1 was not given any opportunity to join the inquiry proceedings. On the basis of the said report, respondent No.1 was dismissed from service vide resolution dated 10.06.2008.

Defendant No.1 was proceeded *ex parte*.

Defendants No.2 and 3 in their written statement averred that the suit was not maintainable. On merits, it was averred that respondent No.1 had been ordered to be dismissed from service after following due procedure of law.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether order dated 10.6.2008 passed by cooperative Agricultural service society limited Kothe Wiring is illegal, null and void?OPP
2. Whether the plaintiff is entitled for relief of declaration, as prayed for?OPP
3. Whether the plaintiff is entitled for relief of mandatory injunction, as prayed for?OPP
4. Whether present suit is not maintainable?OPD
5. Whether Civil court has no jurisdiction to try the case?OPD
6. Relief.”

In support of his case, respondent No.1-plaintiff led his evidence. However, defendants No.2 and 3 failed to lead their evidence and their evidence was closed by order on 01.12.2011.

Trial Court vide judgment/decreed dated 19.01.2012 decreed the suit of plaintiff-respondent No.1. While dealing with the issue No.6 (relief), the trial Court held as under:-

“In view of my above discussion, reasons and findings particularly on issues no.1 to 3 above, the suit filed by the plaintiff succeeds and the same is hereby ordered to be decreed with costs to the effect that order dated 10.6.2008 passed by defendants no.2 and 3 is illegal, null and void, as

not passed in accordance with rule 14 of Punjab State Cooperative Agricultural Service Society Service Rules, 1997 and therefore, said order is set aside and the plaintiff is entitled to get his salary and arrears of the suspension allowance from the date of suspension to the date of his reinstatement alongwith interest @ 6% p.a. However, before parting with this judgment, it is made clear that the defendants have got every right to get the enquiry freshly conducted against the plaintiff in respect of these charges, as per rules as prescribed for imposing major penalty upon him. Any miscellaneous application pending on the file is disposed of being not pressed. Unexhibited documents are ordered to be returned to the parties against proper receipt and identification. Decree sheet be prepared and file be consigned to record room."

Appeal filed by defendants No.2 and 3 against the said judgment/decreed was dismissed by the First Appellate Court vide judgment/decreed dated 04.09.2014. Hence, the present appeal by the appellant-defendant No.2.

I have heard learned counsel for the appellant and have gone through the record available on the file carefully.

The scope of judicial review regarding interference with punishment order is very limited. The jurisdiction of this Court is only to see the method/manner of awarding punishment. The Court is only concerned with the procedure adopted by the Punishing Authority. If the procedure adopted by the Punishing Authority is according to rules and natural justice, then no interference with the punishment order is

called for. This Court cannot go into the merits of the case. In case, the finding of the Inquiry Officer is based on some evidence, then the Court cannot re-appreciate the evidence or weigh the same like the Appellate Authority. So long as there is some evidence in support of the conclusion arrived at by the departmental authority, the same has to be sustained. Some defect in the inquiry has to be pointed out before this Court can interfere with the punishment order. Further more, if defect is pointed out then the delinquent employee has to show as to what prejudice has been caused to him on account of the said defect. The Court exercising jurisdiction of judicial review is not to interfere with the finding of the fact arrived at in a departmental inquiry excepting in a case of mala fide or perversity.

Learned trial Court after appreciating the evidence on record held that vide resolution dated 18.02.2008, notice qua charges was served on respondent No.1. Respondent No.1 submitted his reply to the said notice. Thereafter, Inquiry Officer submitted his report. However, no witnesses were examined by the Inquiry Officer nor the copy of the charge-sheet was served on respondent No.1. During inquiry proceedings, no documents were produced and presenting officer was not appointed to put up the case of appellant before the Inquiry Officer. Opportunity of personal hearing was also not afforded to respondent No.1 before passing the order of dismissal. There is nothing on record to suggest that

the above findings recorded by the learned trial Court, are contrary to record.

In the facts and circumstances of the present case, the learned Courts below had thus, rightly held that the services of respondent No.1 had been dismissed without following due procedure of law. Trial Court has given an opportunity to the defendants to conduct fresh enquiry in accordance with law.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

(SABINA)
JUDGE

February 18, 2016
mahavir